

PROPRIETARY INFORMATION AGREEMENT

This Agreement is effective _____, by and between McDonnell Douglas Corporation, a wholly owned subsidiary of The Boeing Company (Boeing), acting through Integrated Defense Systems, Airlift & Tanker Programs, located at 2401 E. Wardlow Road, Long Beach, California 90807, and _____ acting through its office located at _____.

BACKGROUND

This Agreement sets forth the rights and obligations of the parties with respect to the use, handling, protection, and safeguarding of Proprietary Information which is disclosed by and between the parties for the purposes of _____.

(specify how the information will be used, identify the specific purpose, such as: review and evaluation, examination or test, preparing a proposal, etc.) in connection with _____ (specify the program if applicable or the technology).

TERMS AND CONDITIONS

1. **Definition of Proprietary Information** Proprietary Information means all information related to the purposes that is identified as Proprietary Information, including, but not limited to, technical information in the form of designs, concepts, requirements, specifications, software, interfaces, components, processes, or the like.

2. **Procedure to Protect** To gain protection under this Agreement as Proprietary Information, an originating party will disclose information in written or other permanent form and will clearly and conspicuously mark such information as being proprietary using an appropriate legend. Information stored in electronic form on disk, tape, or other storage media constitutes information in permanent form. Such electronic information will be adequately marked if a proprietary legend displays when the information originally runs on a computer system and when the information is printed from its data file. If an originating party originally discloses information in some other form (e.g., orally or visually), a receiving party will protect such information as Proprietary Information to the extent that the originating party:

- a) Identifies the information as proprietary at the time of original disclosure;
- b) Summarizes the Proprietary Information in writing;
- c) Marks the writing clearly and conspicuously with an appropriate proprietary legend;
- d) Delivers the writing to the receiving party within thirty (30) days following the original disclosure.

An originating party will not identify information as proprietary unless the originating party believes that such information is proprietary or constitutes a trade secret. The parties will attempt to limit the exchange of Proprietary Information, disclosing only that Proprietary Information necessary for the purposes of this Agreement.

3. **Limited Distribution** A receiving party will limit access to Proprietary Information it receives to its employees who have a "need-to-know" the Proprietary Information for the purposes expressed above. A receiving party will copy Proprietary Information only as reasonably necessary for it to complete the purposes of this Agreement. In the event that a receiving party uses contract labor in the

operation of its business and the receiving party needs to disclose the Proprietary Information to such contract labor personnel to accomplish the purposes of this Agreement, release and disclosure are permitted provided that the contract labor personnel are under obligations to hold such information in confidence under terms and conditions at least as restrictive as the terms and conditions of this Agreement.

4. **Limitations on Use or Disclosure** For a period of five (5) years after receipt of Proprietary Information under this Agreement, a receiving party will hold Proprietary Information in confidence. Upon expiration of this protection period, all limitations this Agreement imposes on use or disclosure of Proprietary Information will cease. A receiving party may use Proprietary Information only for the purposes set forth above during the term of this Agreement. A receiving party will not disclose Proprietary Information to any nonparty during the protection period, despite any earlier termination of this Agreement. A receiving party will not use Proprietary Information that it receives under this Agreement for design or manufacture without first obtaining the written permission of the originating party.

5. **Proposal Legend & Restriction Notification** If the parties prepare and submit a proposal, each party may disclose such received Proprietary Information to the U.S. Government to support the proposal. The party submitting the proposal will mark the Proprietary Information with the appropriate restrictive legend that the U.S. Government specifies for use with such proposal and, in accordance with the Government's acquisition regulations, the disclosing party will identify the Proprietary Information which should be furnished to the Government with restrictions on its use, release, or disclosure. The Government and any of its proposal support contractors may review any such proposal that the parties submit.

6. **Duty of Care** A receiving party will satisfy its obligations to protect Proprietary Information from misuse or unauthorized disclosure by exercising reasonable care. Such care will include protecting Proprietary Information using those practices the receiving party normally uses to restrict disclosure and use of its own information of like importance. A receiving party will not be liable if it accidentally discloses Proprietary Information while exercising reasonable care, provided that, upon discovery of such disclosure, the receiving party attempts to retrieve the Proprietary Information and reviews its practices to attempt to prevent any further accidental disclosures.

7. **Exceptions to Duty** This Agreement does not restrict disclosure or use of information otherwise qualifying as Proprietary Information if the receiving party can show that any one of the following conditions exists.

- a. The receiving party knew the information and held it without restriction as to further disclosure when the originating party disclosed the information under this Agreement.
- b. The receiving party developed the information independently.
- c. Another source lawfully disclosed the information to the receiving party and did not restrict the receiving party in its further use or disclosure.
- d. The information was already in the public domain when the originating party disclosed it to the receiving party; entered the public domain after the originating party disclosed it under this Agreement, but through no fault of the receiving party; or became generally known, but through no fault of the receiving party.
- e. The information was ascertained by proper means other than disclosure under this Agreement.
- f. The protection period has expired.

- g. The information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, provided that the subpoenaed party notified the disclosing party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given.

8. **Disclaimer of License** Proprietary Information is and remains the property of the originating party. The receiving party does not receive any right or license under any patents, copyrights, trade secrets, or the like of the originating party.

9. **Disclaimer of Warranty** Neither party warrants that a receiving party's use of information it receives under this Agreement will be free from claims by nonparties for infringement or misappropriation of intellectual property rights. An originating party does not warrant that any information it discloses is complete, accurate, free from defects, or useful for the purposes of the receiving party.

10. **Notice Addresses** The parties will transmit Proprietary Information, notices, and authorizations under this Agreement addressed as follows:

McDonnell Douglas Corporation, _____
a wholly owned subsidiary of The Boeing Company _____
Mail Code: _____
2401 E. Wardlow Road, Long Beach, CA 90807 _____

The technical focal point at Boeing is: _____
The technical focal point at _____ is: _____
A party may change its address or designee by written notice to the other party.

11. **Term and Termination** Either party may terminate this Agreement upon thirty (30) days written notice to the other party. Absent any such early termination, this Agreement will terminate on _____.

12. **Return or Destroy** A receiving party will, upon written request, use reasonable efforts to destroy all received Proprietary Information, including copies, then in its possession or control. Alternatively, a receiving party may use reasonable efforts to return all such Proprietary Information and copies to the originating party. A receiving party may retain one archival copy of received Proprietary Information.

13. **Independent Contractors** The parties are independent contractors. Each will bear all costs and expenses it incurs in connection with this Agreement. This Agreement does not obligate either party to enter into a contract, subcontract, teaming agreement, joint venture, partnership, or other business relationship with the other party.

14. **Precedence Between This Agreement and Conflicting Legends** The U.S. Government may require legends or markings to identify information subject to national security classification or export control. This Agreement does not affect those legends or markings. The terms of this Agreement do, however, take precedence over any conflicting legends or markings that the originating party uses to control reproduction, use and disclosure of Proprietary Information.

15. **Disclosures to Parent Company or Wholly-Owned Subsidiaries** Notwithstanding the above, a receiving party may disclose Proprietary Information to (1) employees of its parent company or (2)

employees of a wholly-owned subsidiary of its parent company or (3) employees of the receiving party's wholly-owned subsidiaries, having a need-to-know for the purposes of this Agreement, but only if said employees are under an obligation to hold such information in confidence under terms and conditions at least as restrictive as the terms and conditions of this Agreement.

16. **Applicable Law** In the case of a dispute, the parties will interpret, construe, and apply this Agreement using the law of the State of Washington, excluding from such law the rules regarding choice of law.

17. **Export Control** The parties will comply with all U.S. export control laws and regulations. The information which the parties may wish to disclose pursuant to this Agreement may be subject to the provisions of the Export Administration Act of 1979 and the Export Administration Regulations promulgated thereunder, the Arms Export Control Act, and the International Traffic in Arms Regulations, and the sanctions laws administered by the Office of Foreign Assets Control. The parties acknowledge that these statutes and regulations impose restrictions on import, export and transfer to third countries of certain categories of data, and that licenses from the U.S. Department of State and/or the U.S. Department of Commerce may be required before such data can be disclosed hereunder, and that such licenses may impose further restrictions on use and further disclosure of such data.

18. **Merger** This Agreement contains the entire understanding between the parties. It supersedes all prior or contemporaneous communications, agreements, or understandings between the parties about the exchange and protection of Proprietary Information for the purposes set forth above. A modification will not bind any party unless the modification is in writing and authorized representatives of both parties sign it.

IN AGREEMENT, the parties sign duplicate originals of this Agreement.

THE BOEING COMPANY

By _____

By _____

Typed Name _____

Typed Name _____

Title _____

Title _____

Date _____

Date _____